

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Transcontinental Gas Pipe Line Corporation

Docket No. RP96-359-029

ORDER ACCEPTING NEGOTIATED RATE AGREEMENTS

(Issued December 29, 2005)

1. On November 7, 2005, Transcontinental Gas Pipe Line Corporation (Transco) filed various explanations about two negotiated rate service agreements under Rate Schedule FT between Transco and Municipal Gas Authority of Georgia (MGAG) in compliance with an order issued by the Commission on October 26, 2005 (October 26 Order).¹ The Commission accepts Transco's explanations, and grants the necessary waivers of the Commission's regulations to permit the subject arrangements to become effective October 1, 2005, as requested.

Background

2. On September 30, 2005 (September 30 filing), Transco filed nineteen negotiated rate agreements to provide for permanent releases of firm transportation service under Transco's SouthCoast, Sundance, and Momentum Expansion Projects to MGAG from several of Transco's shippers. The October 26 Order accepted seventeen of the negotiated rate agreements to be effective October 1, 2005. However, the Commission accepted and suspended contract no. 9031703, with the City of Elberton, Georgia (Elberton), as the releasing shipper, and contract no. 9031704, with the City of Sugar Hill, Georgia (Sugar Hill), as the releasing shipper (Elberton and Sugar Hill Agreements). The Elberton and Sugar Hill Agreements for firm service on the Momentum Expansion included negotiated rates that appeared to exceed the applicable maximum FT-Momentum rate.

3. In the October 26 Order, the Commission pointed out that section 284.8(h)(1) of the Commission's regulations, 18 C.F.R. § 284.8(h)(1) (2005), provides that the rate for a capacity release "may not exceed the maximum rate." The Commission concluded that it

¹ *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,097 (2005).

was not clear from the information contained in the September 30 filing whether waiver of section 284.8(h)(1) would be necessary in order to accept the Elberton and Sugar Hill Agreements. That was because Transco's filing contained no indication how the releases from Elberton and Sugar Hill to MGAG were effectuated. As a result, the Commission was not certain whether: (1) Elberton's and Sugar Hill's capacity release postings required the replacement shipper to pay the full negotiated rate Elberton and Sugar Hill were paying or (2) Elberton's and Sugar Hill's capacity release postings only required the replacement shipper to pay up to the maximum reservation rate, and MGAG subsequently entered into an independent agreement with Transco to pay the instant negotiated rate. The Commission stated that, if the first, then waiver of section 284.8(h)(1) is arguably required. If the second, then waiver would likely not be required. The Commission accordingly directed Transco to provide a description of the capacity release transactions between Elberton and MGAG, and Sugar Hill and MGAG, including whether the releases were prearranged. Transco was also directed to submit (1) the full text of any postings of Elberton's and Sugar Hill's capacity releases, including any requests for bids and (2) all terms and conditions agreed to by MGAG in order to obtain the releases. The Commission directed Transco to state whether it believed waiver of section 284.8(h)(1) was necessary and, if so, to state the reasons why such a waiver would be justified.

4. Transco filed to comply with the October 26 Order on November 7, 2005. The compliance filing shows that MGAG entered into prearranged permanent capacity release deals with Elberton and Sugar Hill, in which MGAG agreed to pay the full negotiated rates Elberton and Sugar Hill were paying, which were higher than the applicable maximum recourse rate. On September 15, 2005, Transco posted Elberton's and Sugar Hill's capacity release offers. The postings specified that the releases were to be permanent, that the minimum acceptable rates for the Elberton and Sugar Hill capacity releases were the full negotiated rates Elberton and Sugar Hill had been paying, and that the capacity release offers were conditioned on Elberton and Sugar Hill being relieved of liability under their negotiated rate agreements with Transco. No bids were submitted in response to the postings.

5. In its compliance filing, Transco recognizes that a waiver of the Commission's regulations is necessary in order to permit the instant permanent capacity release, since those releases are at rates in excess of the applicable maximum rate. However, Transco points out that, in its recent order in *Tennessee Gas Pipeline Company*, the Commission stated that section 284.8(e) of the Commission's regulations governs releases that are posted for bidding, while "section 284.8(h) applies to releases which are not required to be posted."² Transco states that the Elberton and Sugar Hill Agreements were posted for

² *Tennessee Gas Pipeline Co.*, 113 FERC ¶ 61,106, at P 6 n.5 (2005) (*Tennessee*).

bidding, so Transco believes that section 284.8(e)'s prohibition on bids in excess of the maximum rate is the applicable regulation that must be waived in this case. Transco also states that it "believes a waiver of section 284.8(e) of the Commission's regulations is required under the unique circumstances present here."³

Public Notice and Protests

6. Public notice of Transco's filing was issued on November 15, 2005, with protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)).

7. On November 21, 2005, MGAG filed comments urging the Commission to approve the Elberton and Sugar Hill Agreements, together with a late motion to intervene in this proceeding.⁴ The Commission grants MGAG's late intervention, since MGAG is a party to the contracts at issue here and its participation will not disrupt the instant proceeding. MGAG states that the permanent capacity releases will allow MGAG "to utilize the Momentum Expansion capacity in furtherance of its obligation, as a joint-action agency, to serve its members, including Elberton and Sugar Hill" and "to achieve efficiencies in the provision of service to its members by, among other things, allowing the Momentum Expansion capacity service agreements to be consolidated and administered more efficiently."⁵

Discussion

8. When a pipeline believes waiver of the Commission's capacity release regulations may be necessary in order to permit a particular capacity release to take place, the pipeline should request waiver of the relevant regulations before the release is posted for bidding.⁶ Moreover, in any request for waiver of the Commission's regulations, a pipeline should identify the specific section of the regulations for which it seeks the waiver. Here, Transco did not comply with either of these requirements when it made its original September 30 filing. However, because the Commission believes a waiver is appropriate in the particular circumstances of the instant permanent release, and in order to avoid penalizing the parties to this release transaction, the Commission will grant a waiver of its regulations in order to permit the instant two permanent capacity releases to take place.

³ November 7 Compliance Filing at 2.

⁴ MGAG Comments at 1, n.2.

⁵ MGAG Comments at 4.

⁶ See *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044 (2004) (pipeline did request the necessary waivers before release was posted).

9. However, unlike *Tennessee*, the Commission grants waiver of section 284.8(h)(1) of its regulations, and not section 284.8(e). Section 284.8(h)(1) provides that a prearranged release at the maximum rate need not be posted for bidding pursuant to section 284.8(e) and further provides that “a release under this paragraph may not exceed the maximum rate.” Section 284.8(e) provides that, where a capacity release is posted for bidding, the bids may not exceed the maximum rate.

10. *Tennessee* involved a prearranged deal, in which the releasing shipper had agreed to make a lump sum payment to the replacement shipper, in return for the replacement shipper’s agreement to enter into a contract with Tennessee under which the replacement shipper would pay the same negotiated rate (exceeding the maximum recourse rate) that the releasing shipper had been paying. This prearranged deal was posted for bidding in a reverse auction process with bids being evaluated on the basis of which replacement shipper required the smallest payment from the releasing shipper in order to take the release. Thus, the posting in *Tennessee* did not seek bids in excess of the releasing shipper’s negotiated rate; rather, it only sought to minimize the releasing shipper’s cost of obtaining a replacement shipper willing to pay the same negotiated rate as the releasing shipper had been paying.

11. Here, by contrast, the two releasing shippers have already obtained a prearranged replacement shipper, MGAG, who has agreed to pay the full negotiated rate that the two releasing shippers were paying. Moreover, MGAG is a Georgia state public corporation formed under the Municipal Gas Authority of Georgia Act⁷ for the purpose of obtaining gas supplies for Georgia municipalities that own and operate natural gas systems. The two releasing shippers are such municipalities and are members of MGAG. Thus, the sole purpose of the instant releases was to transfer the capacity of these two municipalities to MGAG, which will use the capacity to provide gas to the two municipalities, as well as its other members. In these circumstances, a posting of the instant releases for bidding serves no useful purpose. Another shipper could obtain the capacity only by submitting a bid in excess of the negotiated rate the prearranged replacement shipper has agreed to pay, which is already above the maximum recourse rate. And if another shipper did obtain the capacity, that would defeat the purpose of these prearranged capacity releases, which is to transfer the capacity to a public corporation that will continue to use the capacity on behalf of the releasing municipalities. Thus, the Commission finds the real issue presented in the present case to be whether it should waive the maximum rate cap provisions of section 284.8(h)(1) in order to permit the instant prearranged capacity releases to be treated similarly to prearranged maximum rate releases, which can be implemented without posting for bids

⁷ 1987 Ga. Laws page no. 745, Ga. Code Ann., Chapter 4 of Title 46.

from other shippers. The Commission finds that in the particular circumstances of this case such a waiver is appropriate.

9. The permanent capacity releases of the Elberton and Sugar Hill Agreements will allow MGAG to consolidate the Momentum Expansion capacity service agreements. This consolidation will benefit MGAG's members, including Elberton and Sugar Hill, because it will allow MGAG to serve its members more efficiently. Given the unique circumstances of these capacity releases where the capacity is being transferred to a public corporation for continued use on behalf of the releasing shippers, we find it reasonable to grant waiver of section 284.8(h)(1), and approve the Elberton and Sugar Hill Agreements.

The Commission orders:

The Elberton and Sugar Hill Agreements are hereby accepted, effective October 1, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.